

1 E. MARTIN ESTRADA
United States Attorney
2 MACK E. JENKINS
Assistant United States Attorney
3 Chief, Criminal Division
JONATHAN GALATZAN (Cal. Bar No. 190414)
4 Assistant United States Attorney
Chief, Asset Forfeiture Section
5 312 N. Spring Street, 14th Floor
Los Angeles, CA 90012
6 Telephone: (213) 894-2727
Facsimile: (951) 276-6202
7 E-mail: Jonathan.Galatzan@usdoj.gov

8 Attorneys for Plaintiff
United States of America

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 CAROLINE JOANNE HERRLING,

15 Defendant.
16
17

NO. 2:23-cr-00059-MEMF

GOVERNMENT'S AMENDED APPLICATION
FOR PRELIMINARY ORDER OF
FORFEITURE

18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19 Plaintiff United States of America hereby applies for
20 issuance of an Amended Preliminary Order of Forfeiture pursuant
21 to Fed. R. Crim. P. 32.2(b) as to the following property: the
22 real property with Assessor's Parcel Number 2005-012-003,
23 commonly known as 8361 Woodlake Avenue, West Hills, California
24 91304, with title held by Caroline Herrling.
25

26 This amended application, which deals solely with the
27 specific property as to which forfeiture is sought (described in
28 detail above), is supported by defendant's guilty plea and the

1 matters set forth in the accompanying Memorandum of Points and
2 Authorities.

3 DATED: July 24, 2023

Respectfully submitted

4 E. MARTIN ESTRADA
United States Attorney

5 MACK E. JENKINS
6 Chief, Criminal Division

7 /s/ Jonathan Galatzan
8 JONATHAN GALATZAN
Assistant United States Attorney
9 Chief, Asset Forfeiture Section

10 Attorneys for Plaintiff
UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 2, 2023, Defendant Caroline Herrling entered a
 4 plea of guilty to Count One of the Information, which charges
 5 defendant with conspiracy to commit wire fraud, in violation of
 6 18 U.S.C. § 1349. Pursuant to the Forfeiture Allegation of the
 7 Information and Fed. R. Crim. P. 32.2(b), the government now
 8 applies for the entry of the Preliminary Order of Forfeiture of
 9 the following property:

10 i. Real property with Assessor's Parcel Number 2005-
 11 012-003, commonly known as 8361 Woodlake Avenue, West Hills,
 12 California 91304, with the title held by Caroline Herrling (the
 13 "Forfeitable Property").

14 A proposed order is lodged contemporaneously herewith. The
 15 government also requests that the forfeiture of the Forfeitable
 16 Property be stated orally at defendant's sentencing and set
 17 forth in defendant's Judgment and Commitment Order.

18 **II. ARGUMENT**

19 **A. The Nexus Between Defendant's Crime and the**
 20 **Forfeitable Property Has Been Established by the Defendant's**
 21 **Guilty Plea**

22 As soon as practicable after entering a guilty verdict or
 23 accepting a plea of guilty or nolo contendere on any count in an
 24 indictment or information with regard to which criminal
 25 forfeiture is sought, the court must determine whether the
 26 government has established the requisite nexus between the
 27 property and the offense. Fed. R. Crim. P. 32.2(b)(1). The

1 Advisory Committee Notes for this provision explain that for the
2 preliminary order of forfeiture, the court must determine "if
3 the property was subject to forfeiture under the applicable
4 statute, e.g., whether the property represented the proceeds of
5 the offense." Advisory Committee Notes to Rule 32.2,
6 subdivision (b) (2000 Adoption). The standard of proof
7 regarding the forfeitability of property in a criminal case is
8 preponderance of the evidence. See United States v. Najjar, 300
9 F.3d 466, 485-86 (4th Cir. 2002); United States v. Shryock, 342
10 F.3d 948, 991 (9th Cir. 2003) (following Najjar); United States
11 v. DeFries, 129 F.3d 1293, 1312 (D.C. Cir. 1997); United States
12 v. Hernandez-Escarsega, 886 F.2d 1560, 1576-77 (9th Cir. 1989)
13 (interpreting language in 21 U.S.C. § 853); United States v.
14 Bieri, 21 F.3d 819 (8th Cir. 1994) (§ 853).

15 Thus, the only question before the Court in connection with
16 the requested entry of the proposed Preliminary Order is whether
17 the evidence before the Court is enough to establish by a
18 preponderance of the evidence that there is a nexus between the
19 specific property to be forfeited, and the offense to which
20 defendant pled guilty. See Rule 32.2(b)(1).

21 The existence or extent of third-party interests in the
22 specific property will be determined after the entry of the
23 preliminary order. See United States v. Lazarenko, 476
24 F.3d 642, 648 (9th Cir. 2007) ("Upon a finding that the property
25 involved is subject to forfeiture, a court must promptly enter a
26 preliminary order of forfeiture without regard to a third
27 party's interests in the property."). The preliminary order

1 should be entered promptly in order to avoid unnecessary delay
2 in the forfeiture process and resolve potential third-party
3 rights. United States v. Yeje-Cabrera, 430 F.3d 1, 15 (1st Cir.
4 2005). The defendant need not be present when the preliminary
5 order is entered. United States v. Segal, 495 F.3d 826, 837-38
6 (7th Cir. 2007).

7 The government is not required to establish the defendant's
8 ownership of the property either to seize it or to obtain a
9 preliminary order of forfeiture, and third parties are
10 prohibited from intervening in the criminal case and cannot
11 complain that they have to wait for the ancillary proceeding to
12 assert their rights. Almeida v. United States, 459 F.3d 377,
13 381 (2d Cir. 2006); 18 U.S.C. § 1963(i). As explained in the
14 Advisory Committee Notes to Rule 32.2 (2000), the Rule was
15 revised with the intent to eliminate confusion over whether the
16 extent of the defendant's ownership interest should be
17 determined by the finder of fact. The new rule clarified that
18 the only question upon conviction or a guilty plea is whether
19 there is a nexus between the violation of which the defendant
20 has been convicted (or to which he has pled) and the property
21 sought - if there is, the court should enter an order forfeiting
22 "whatever interest a defendant may have in the property without
23 having to determine exactly what that interest is." A
24 defendant cannot object to the entry of a preliminary order on
25 the ground that the property at issue does not belong to him.
26 United States v. Schlesinger, 396 F. Supp. 2d 267, 273 (E.D.N.Y.
27 2005).

1 Here, all the proof that is necessary is contained in plea
 2 agreement, whereby Defendant admitted that the Forfeitable
 3 Property was subject to forfeiture as property representing the
 4 proceeds of the offense regarding the crime to which she pled
 5 guilty, namely 18 U.S.C. § 1349.

6 Therefore, the requirements of Rule 32.2(b) have been met
 7 and the proposed Preliminary Order should be entered.

8 **B. The Mechanics of the Criminal Forfeiture**

9 The Preliminary Order of Forfeiture becomes final as to the
 10 defendant at the time of sentencing (or before sentencing, if
 11 defendant consents). Rule 32.2(b)(3). After entry of the
 12 preliminary order, the second phase of the forfeiture
 13 proceedings may begin, to determine whether any third-party
 14 rights may exist in the specific property to be forfeited. Fed.
 15 R. Crim. P. 32.2(c)(1).

16 Accordingly, the government respectfully requests that the
 17 Court enter the proposed Preliminary Order of Forfeiture lodged
 18 contemporaneously herewith, authorizing the government to seize
 19 the property subject to forfeiture (to the extent it has not
 20 already done so) and to commence proceedings governing
 21 third-party rights. Fed. R. Crim. P. 32.2(b)(3). Following the
 22 Court's disposition of any third-party interests, or the
 23 expiration of the period provided in 21 U.S.C. § 853(n)(2) for
 24 the filing of third-party petitions, the government shall have
 25 clear title to the Forfeitable Property.

26 **III. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

27 The Court must pronounce the forfeiture conditions orally
 as part of the sentence imposed on the defendant and must

1 include the forfeiture in the judgment and commitment order.
2 Fed. R. Crim. P. 32.2(b)(4). The government recommends the
3 following language be read to the defendant and modified as
4 necessary for inclusion in the judgment and commitment order at
5 the time of her sentencing:

6 Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28
7 U.S.C. § 2461(c) and the Information, defendant
8 Caroline Herrling has forfeited all of her right,
9 title, and interest in the specific property more
10 particularly described in the Preliminary Order
11 of Forfeiture entered on [date].

12 **IV. CONCLUSION**

13 For the foregoing reasons, the government respectfully
14 requests that the Court forthwith enter the proposed Preliminary
15 Order of Forfeiture lodged herewith.

16 DATED: July 25, 2023

Respectfully submitted,

17 E. MARTIN ESTRADA
18 United States Attorney

19 MACK E. JENKINS
Chief, Criminal Division

20 /s/ Jonathan Galatzan
21 JONATHAN GALATZAN
22 Assistant United States Attorney
Chief, Asset Forfeiture Section

23 Attorneys for Plaintiff
24 UNITED STATES OF AMERICA
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